

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

JOSEPH FIELDS, III,	)	Civ. 09-4146-KES
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
DOUGLAS L. WEBER, individually	)	
and in his official capacity as	)	
Warden; and	)	
DARYL SLYKHUIS, individually	)	
and in his official capacity as	)	
Deputy Warden at the South	)	
Dakota State Penitentiary;	)	
	)	
Defendants.	)	

Plaintiff, Joseph Fields, III, filed a pro se notice of appeal on October 28, 2010. On November 3, 2010, the court mailed Fields a notice assessing the \$455 appellate filing fee. At that time, the court notified Fields that if he was unable to pay the appellate filing fee, he could move to proceed in forma pauperis. Fields was provided with the forms to file a motion for leave to proceed in forma pauperis. On November 9, 2010, the Eighth Circuit Court of Appeals issued a limited remand, directing this court to determine Fields' in forma pauperis status and assess the appellate filing fee pursuant to 28 U.S.C. § 1915, in compliance with *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997).

*Henderson* sets forth the procedures to be used to assess, calculate, and collect appellate filing fees in compliance with the Prison Litigation Reform Act of 1995 (PLRA). *Id.* at 483. The court finds Fields' appeal is taken

in good faith. But Fields has not filed the requisite paperwork to proceed in forma pauperis or paid the appellate filing fee. “If the district court does not receive a certified copy of the prisoner’s prison account within 30 days of the notice of appeal, it shall calculate the initial appellate filing fee at \$35 or such other reasonable amount warranted by available information[.]” *Id.* at 485 (emphasis added). Field was granted leave to litigate in forma pauperis at the district court level. *See* Docket 6, Order Determining In Forma Pauperis Status and Referring Case. At that time, Fields reported an average monthly deposit of \$94.67 and an average monthly balance of \$50.81. *Id.* at 2. Thus, an initial partial filing fee of \$35 appears reasonable. Therefore, it is

ORDERED that Fields is granted leave to proceed in forma pauperis on appeal.

IT IS FURTHER ORDERED that the institution having custody of Fields is hereby directed that whenever the amount in plaintiff’s trust account exceeds \$10, monthly payments that equal 20 percent of the funds credited to the account the preceding month shall be forwarded to the United States District Court Clerk’s office pursuant to 28 U.S.C. § 1915(b)(2), until the appellate filing fee of \$455 is paid in full.

Dated February 9, 2011.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
CHIEF JUDGE